



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Med-National, Inc.

File: B-277430

Date: September 8, 1997

Joan K. Fiorino, Esq., and Donald E. Barnhill, Esq., East & Barnhill, for the protester.

Cecelia R. Jones, Esq., and Alden F. Abbott, Esq., Department of Commerce, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Late hand-carried proposal was properly rejected as late where a preponderance of the evidence does not establish that the protester's courier delivered the offer to the designated location prior to the time set for closing.

DECISION

Med-National, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. 52WCNA706028SH, issued by the Department of Commerce to obtain employee assistance program services. Med-National argues that the agency should have accepted its proposal notwithstanding its late receipt because the government's action was the paramount cause for the delay.

We deny the protest.

BACKGROUND

Commerce issued this solicitation as part of its role in providing acquisition support services to a consortium of Cooperative Administrative Support Units (CASU) and Department of the Treasury Franchise Business Activities (FBA).¹ The consortium requires contracting support to provide employee assistance program services to its customer agencies throughout the United States. These services enable employees

¹Executive action established CASUs as special units, associated with various federal agencies, whose mission is to provide a broad range of services to these agencies on a consolidated basis, thereby reducing overall government spending costs in the aftermath of federal downsizing. Federal legislation established FBAs as an extension of the CASU concept.

with alcohol, drug, mental, emotional, family or other personal problems to obtain services from appropriate prevention, treatment, and rehabilitation programs.

Commerce contracted with a private contractor, Ms. Lynda McBroom, to provide the acquisition support services for these contracts. She, in turn, contracted with Mr. John Thorslev to assist her. These two contract facilitators, both former federal contracting officers, share a cubicle in Department of Labor (DOL) office space at 71 Stevenson Street, Room 515, in San Francisco, California.

The solicitation, as amended, set forth the closing time for receipt of proposals as June 4, 1997, 1 p.m. Pacific Daylight Savings Time, and included the full text of the clause at Federal Acquisition Regulation § 52.215-10, "Late Submissions, Modifications, and Withdrawals of Proposals." Proposals were to be mailed or hand-carried to:

Department of Labor
ATTN: Contract Facilitator, Lynda McBroom
71 Stevenson Street, Room 515
San Francisco, CA 94105

The agency received 12 proposals prior to the 1 p.m. closing time, but did not receive Med-National's proposal until 1:11 p.m. Ms. McBroom contacted the contracting officer to relay her account of the events surrounding the late receipt of Med-National's proposal, and the contracting officer determined that the proposal could not be considered. This protest followed.

Med-National contends that its courier, from the commercial carrier EagleUSA, was in Room 515 prior to 1 p.m. but no one was present to accept delivery of the proposal. Med-National therefore argues that the government should accept its late-delivered proposal because the government was the paramount cause for the delay. Commerce counters that the evidence does not support Med-National's contention that its courier was in Room 515 prior to 1 p.m.

DISCUSSION

Legal Standard

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. The Staubach Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 3. By choosing a method of delivery other than those methods specified in the late proposal clause, an offeror such as Med-National assumes a high degree of risk that its proposal will be rejected if untimely delivered. Seer Publishing, Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181 at 5. The reason for the rules governing late proposals is that the manner in which the government conducts its procurements must be subject to

clearly defined standards that apply equally to all offerors so that fair and impartial treatment is ensured. Id.

A proposal delivered to an agency by commercial carrier, as here, is considered to be hand-carried. A hand-carried proposal that arrives late may be considered where improper government action was the paramount cause for the late submission, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Occu-Health, Inc., B-250043, Oct. 30, 1992, 92-2 CPD ¶ 314 at 3. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id. Even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility to deliver a hand-carried proposal to the proper place by the proper time. International Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146 at 4.

We will not reach the question of the relative allocation of fault for the late delivery of a proposal unless we can determine that the proposal was at the designated location for receipt prior to the time set for closing. See Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 CPD ¶ 332 at 3. In making this determination, we consider all relevant evidence in the record, including statements by parties on behalf of the protester and the agency. Int'l Steel Erectors, supra, at 3. Unless a preponderance of the evidence shows that the proposal was at the designated location for receipt prior to the time set for closing, the proposal may not be considered for award. See IPS Group, B-235988, Oct. 6, 1989, 89-2 CPD ¶ 327 at 2; Int'l Steel Erectors, supra, at 3.

Our review of the written record here revealed critical inconsistencies in the courier's accounts of the events surrounding the delivery of Med-National's proposal. These accounts were also in stark conflict with the agency's written accounts of the same events. As a result, this Office conducted a hearing in San Francisco to ascertain the facts and to assess the credibility of the courier, the contract facilitators, and a DOL employee who works in Room 515.²

²In the first stage of the hearing, testimony was taken from the witnesses and transcribed by a court reporter. Citations to this transcription are hereafter indicated by the notation "T.," followed by the page and line numbers where necessary. In the second stage of the hearing, a videographer recorded the witnesses "reenacting" their key movements during the time period in question, both within the building and in the immediate vicinity of the building. Citations to this videotape are hereafter indicated by the notation "V.," followed by the time.

Agency Account

Room 515 is a large space broken up by numerous cubicles, a few offices, and a conference room. A receptionist's desk is clearly visible from the main door. V. 16:25:00-27:12. This desk is not staffed full-time, but receptionist responsibilities are shared by four DOL employees from their adjacent cubicles. T. 120 at 2-15. Only one of these employees, Ms. Linda Chavarin-Morales, was in the office on June 4. T. 121 at 16-18; 127 at 12-14. Her cubicle is right next to the receptionist's desk. V. 16:38:30-39:15.

The contract facilitators share a cubicle on the side of the room furthest away from the reception area. V. 16:39:48-40:28. They share one telephone, which rings on only one number, that listed on Med-National's airbill. That number does not ring at the receptionist's desk, and the receptionists do not answer the contract facilitators' telephone. The two contract facilitators are the only people who answer their telephone. Unanswered calls to that number roll over to a voice mail box. T. 50 at 1-15; 104 at 17-24; 129 at 14-18.

In the hour before the 1 p.m. closing, both contract facilitators were sitting in their cubicle coordinating receipt of the proposals. The telephone rang. Mr. Thorslev, whose chair is nearest the telephone, took the call. The caller identified himself as a man from Eagle who had been driving around for an hour trying to deliver a box to Lynda McBroom, but could not find Stevenson Street. Mr. Thorslev verified that the man was delivering a proposal and asked for his location. The man said he was around the Civic Center--which Mr. Thorslev took to be 9th and Market Streets--and Mr. Thorslev gave him directions from that location. Mr. Thorslev told the man that he needed to rush to make the deadline.

When Mr. Thorslev hung up the telephone, he noted the time as 12:49 p.m. and began memorializing the call while filling Ms. McBroom in on the caller's side of the conversation. His note is in the record, as are his and Ms. McBroom's June 4 and July 8 memoranda to the file, their written legal statements, and their hearing testimony, all of which substantiate not only the contents of this conversation, but the recipient of the call--Mr. Thorslev--and the time of its conclusion--12:49 p.m. T. 8-11; 72-76. Mr. Thorslev denies having taken any other calls from any other courier between 11:55 a.m. and 1 p.m. that day, and Ms. McBroom denies having taken any calls whatsoever from a courier that day. T. 29 at 8-16; 51 at 8-13; 71 at 23-25; 72 at 1. During their discussion of the call, the contract facilitators considered whether the courier would be able to timely deliver the proposal. T. 13 at 5-11; 76 at 1-21.

Stevenson Street runs parallel to and one block south of San Francisco's busy Market Street, in the heart of the city's Financial District. Like many other streets in the city, Stevenson is a narrow, one-way street, with limited commercial parking on both sides and one center lane for west-bound through traffic only. To further

complicate matters, Stevenson does not run continuously, but is broken into several segments of street interrupted by buildings. The western-most segment of Stevenson begins at 10th Street and ends just past 9th Street, and the eastern-most segment of Stevenson begins between 3rd and 2nd Streets and ends at 1st Street. 71 Stevenson Street is located in this last segment, approximately midway between 2nd and 1st Streets. The courier was near the Civic Center, at 9th and Market, about 1 1/4 miles and 7 long blocks away from 2nd Street. Considering the distance and the traffic involved--Market Street contains traffic lights at every intersection and is traversed by automobile, truck, bus, and trolley traffic--both contract facilitators thought it virtually impossible for the courier to timely deliver the proposal. T. 12 at 3-6; 13 at 5-11; 76 at 1-21.

The contract facilitators decided to go downstairs and monitor the building entrances and street to meet the courier in case he could arrive by 1 p.m. T. 12 at 7-19; 76 at 22-25; 77 at 1-5. They felt comfortable leaving the office because they had already received all but one of the proposals they were expecting and because their agreement with DOL was that DOL staff would receive packages on their behalf if brought in their absence. They believed that others were in the office at the time of their exit due to "office noise," but were not certain that anyone was in the reception area at the time because they exited out the back door. T. 77 at 9-17; 48 at 9-15; 69 at 3-25; 70 at 1-11; 24 at 2-8.

Both contract facilitators testify, however, that they ran into Ms. Chavarin-Morales after their exit and on their way to the elevator; that Ms. McBroom briefly explained the situation; and that they then took the elevator down to the lobby, arriving at 12:55 p.m. T. 33 at 17-25; 34 at 1-5; 78 at 19-25; 79; 80 at 1-12. While Ms. Chavarin-Morales recalls the location of this meeting differently--she recalls that they met in the lobby as she was entering and they were exiting--the substance of their conversation was the same and she also places the time of this meeting at 12:55 p.m. T. 121 at 19-25; 122 at 1-17; 130 at 19-25; 131 at 1-3; 123 at 4-6. In any case, Ms. Chavarin-Morales went straight to her cubicle, right next to the receptionist's desk, arriving no more than 2 or 3 minutes after this exchange. She was at her desk a few minutes, looked at the clock, and saw that it was "around" 1 p.m. She remained at her desk until the contract facilitators returned. T. 122 at 15-25; 123 at 1-14; 132 at 2-14.

The lobby at 71 Stevenson has glass walls that open to Stevenson on the north and to a courtyard on the west. Each wall contains two sets of glass doors. A security guard's desk is located on the Stevenson side, between its two sets of doors, and looks directly onto the bank of elevators. When the contract facilitators arrived in the lobby at 12:55 p.m., they asked the security guard if anyone had come in with a package. When he said no, they left the building to look for the courier. T. 15 at 1-15; 81 at 7-25; 82 at 1-13.

Mr. Thorslev posted himself on the wide sidewalk running along Stevenson Street, in front of the building's columns and nearest the eastern-most door, and Ms. McBroom posted herself on this same sidewalk, but nearer the building and the courtyard. V. 16:32:30-35:00. They watched the street, courtyard, lobby, and sidewalk for anyone who might be a courier in a vehicle or carrying a package. While they moved slightly back and forth, they maintained their monitoring of these areas.³ They saw no delivery vehicle that appeared to be looking for the building, and no one carrying a package. T. 15 at 14-25; 16-17; 36 at 20-25; 37-41; 82 at 4-25; 83-86; 109-111. They gave up at 1:05 p.m. and went back inside. They asked the guard if he had seen anyone with a package, and he said no. T. 17 at 15-18; 86 at 9-25; 87 at 1-9.

They returned upstairs, stopped by the mailroom, and entered Room 515.⁴ T. 18 at 12-16; 87 at 10-15. They stopped at Ms. Chavarin-Morales' cubicle. In response to their inquiry, she stated that she had not seen anyone and that, although she had made a conscious effort to listen out for noises, she had heard no one yell out and had not heard the door open. T. 123 at 15-25; 124; 130 at 19-25; 131 at 1-9. They returned to their cubicle and shortly afterwards the guard called to say that a package had arrived for Ms. McBroom. They went downstairs to the guard's desk. He said that the courier had just walked in with the package, taken the signed receipt, and left. T. 22 at 1-6; 90. The receipt indicated delivery at 1:10 p.m., and Ms. McBroom signed for the proposal at 1:11 p.m.

Courier's Account

Med-National sent its proposal by EagleUSA from San Antonio, Texas, to San Francisco on the morning of June 4, the due date for receipt of proposals. EagleUSA delivered the proposal to a local delivery service at 9 a.m. that morning. The airbill, properly addressed, contains the clear instruction, "MUST DELIVER IN SFO [San Francisco] BEFORE NOON WITHOUT FAIL ! ! !" Mr. Wally Basorun, an independent contractor who works as a courier for EagleUSA, was assigned to deliver the package, which measured 14" x 19" x 11" and weighed 32 pounds. Despite the notice on the airbill to deliver the package by noon, Mr. Basorun was told that the delivery deadline was 1 p.m. T. 185 at 11-17. The portion of the airbill in Mr. Basorun's possession listed only one name, Lynda McBroom.

³At some point Ms. McBroom briefly explained her presence to a DOL employee but states that she maintained her monitoring of the area. Mr. Thorslev states that he did not join this conversation and Ms. McBroom states that the nearest he came was within "minor hollering" distance. T. 41 at 1-15; 61 at 10-18; 115 at 1-7.

⁴It is unclear whether they went to the mailroom first or to Room 515 first but, given the mailroom's proximity to Room 515 and to the elevator, and the brevity of their visit, the sequencing is immaterial. V. 16:45:00-45:50.

The first account of events provided by Med-National to the agency is contained in two June 27 letters from EagleUSA employees in San Antonio. These letters claim that Mr. Basorun was on site at 11:50 a.m. and located Ms. McBroom at that time, but that she refused to accept delivery. Instead, she sent Mr. Basorun around the building until he finally found someone--the security guard's name is cited--to sign for the proposal.

The second account of events springs from a July 7 visit to the contract facilitators from EagleUSA representatives. Upon their arrival in Room 515, the EagleUSA representatives were escorted back to the contract facilitators' cubicle. In the course of the discussion, the contract facilitators stated that they had been standing in front of the building looking for the courier. EagleUSA's representatives mentioned no story like the one in the June 27 letters, but stated that the courier had parked four blocks away and walked to the building with the package on his shoulder. They said he made his call from the parking lot, and was not asking for driving directions, but for directions to the building. They suggested that the parties may have passed each other in the elevator.

The third account of events is found in Med-National's July 7 protest. The protest contains no reference to the June 27 version of the story and differs from the EagleUSA account of that same day. In this account, as repeated in Mr. Basorun's subsequently-filed affidavit, Mr. Basorun's second delivery of the day was made at 11:55 a.m., and Med-National's proposal was to be his third delivery. He had trouble locating the building using a map, and parked his vehicle three blocks away from the delivery site. He took the package from his vehicle and called Ms. McBroom from a telephone. He was told that someone from her office would "come down and meet" him. He immediately walked to the building, with the package on his shoulder, several minutes before 1 p.m. He walked into the lobby and "did not find anyone in the lobby of the building." He then took the elevator to the fifth floor and walked into Room 515 prior to 1 p.m. He saw no one. He yelled out "hello" more than once. A woman appeared who "apparently did not work in the area." This woman said that everyone must be on break and advised him to take the package to the security desk. He did so, and then left the building.

The fourth account of events is found in Med-National's August 6 comments on the agency report. The comments contain one reference to the June 27 letters and to the July 7 EagleUSA visit. Med-National states, without elaboration, that, "[t]here certainly was some misinterpretation by EagleUSA representatives if these statements were made by the EagleUSA representatives."⁵ That aside,

⁵It was not Med-National, but the agency that provided this Office with both the June 27 letters and the information concerning the EagleUSA visit. Despite the clear conflict between these and subsequent accounts, Med-National made no effort
(continued...)

Med-National's comments introduced an August 5 statement from Mr. Basorun which differs significantly from any other previously known and fail, once again, to offer any explanation for these differences. This statement, which is similar to that made at the hearing, introduces additional elements of uncertainty to Mr. Basorun's story. These combined accounts follow.

Mr. Basorun's second delivery was made at 11:55 a.m. He drove to a location near 9th and Stevenson Streets--the western-most segment of Stevenson--and parked his vehicle. He left the vehicle, taking the package with him, because he thought he might be able to deliver it there. He intended to walk through Stevenson and identify the buildings by number to know exactly where he was going. When he realized that the building was not there, and that Stevenson dead-ended, he entered another building and called the number on his airbill to get directions to 71 Stevenson Street. T. 160; 180-181; 206; 209. Mr. Basorun now states that the recipient of the call identified herself as Ms. McBroom. T. 232 at 1-8. His testimony is that the directions he received were identical to those given by Mr. Thorslev, and are those reflected in his handwriting on the package he took with him. T. 142 at 2-17.

Contrary to his initial affidavit, his August 5 statement mentions nothing about someone coming down to meet him; looking fruitlessly for someone waiting for him in the lobby; and then taking the elevator upstairs. Instead, he states that upon entering the building he went immediately upstairs. At the hearing he rejected his affidavit's account and testified that no one told him they would come down to meet him, but that Ms. McBroom had said she might not be there when he arrived and someone else could receive the proposal.⁶ T. 142 at 21-25; 188 at 8-25; 189.

⁵(...continued)

whatsoever to explain or reconcile them until pressed to do so by this Office just prior to the hearing. Med-National ultimately provided a statement from the dispatcher, the apparent source of the June 27 account. In his statement, made after he had already been "informed of" Mr. Basorun's statement, the dispatcher chalks the June 27 story up to Mr. Basorun's use of incorrect terminology. Under the circumstances, we have little confidence in the dispatcher's independent memory of events.

⁶When this discrepancy was pointed out at the hearing, counsel attempted to show that Mr. Basorun was confused by the differences between American English and "The Queen's" English, which Mr. Basorun learned in his native Nigeria, and really meant the reception area of Room 515 and not the ground floor lobby. We are unpersuaded. By the time Mr. Basorun signed his affidavit, he had been in the building and knew that his reference to someone "coming down" to meet him in the lobby meant that the lobby was on the ground floor. T. 199-200; 224-226.

He returned to his vehicle and drove to the correct segment of Stevenson, following the directions consistent with those given by Mr. Thorslev. Since there was no parking available on the street, he pulled into a loading dock across the street from and just past the building. He asked for and received permission from the guard to make another telephone call to the number on the airbill. T. 144 at 2-16. He states that he spoke to someone other than Ms. McBroom--but cannot say if it was a man or woman. T. 145 at 21-25. In his August 5 statement, he said that he asked if there was any place to park to make a delivery, but the person gave him not that information, but directions to the building. His hearing testimony is that he did get information regarding parking--that there was none. T. 174 at 6-16.

Mr. Basorun drove to the end of Stevenson Street, turned right on First Street, and drove five blocks up to Howard Street, where he parked. He put the package on his shoulder and walked the five blocks back down First Street, turned left on Stevenson, and headed halfway down the block to the building. He said on August 5 that this took 2 to 2 1/2 minutes or less; his hearing testimony is that it took 5 minutes at the most. T. 164 at 2-4. Mr. Basorun states that he went into the building and immediately up the elevator to the fifth floor. Once in Room 515 he waited to see if anyone would be coming out from the offices. He did not see anyone. He said, "hello, hello, hello." After a few moments, a woman appeared. In his August 5 statement he identified her, for the first time, as a Caucasian woman. At the hearing, he was unable to provide further details. T. 190 at 2-7. As before, he states that she said everyone was on break and directed him to the security desk.⁷

Other than the 11:55 a.m. delivery time of his second delivery, Mr. Basorun can provide no precise time or duration of any succeeding event. He maintains, however, that he always checked his watch and knew it was prior to 1 p.m.

⁷On July 16, Ms. McBroom sent an electronic mail message to each person working on the fifth floor in which she described the June 4 events and asked if anyone had any information regarding the courier. Confirmations of receipt were received, but no one stepped forward with any information. At the hearing, Ms. McBroom advised that the only woman who works to the right of the reception area--the direction from which Mr. Basorun says this woman came--is Hispanic, and the only Caucasian woman working in the reception area was out that day. V. 16:46:15-46:40.

Analysis

The threshold matter for our determination is whether it can be established, by a preponderance of the evidence, that Med-National's proposal was in Room 515 prior to 1 p.m. See IPS Group, supra; QualiMetrics, Inc., supra. Our review of the entire record shows that the protester has fallen far short of meeting this burden.

On the one hand, the record contains agency accounts which are, in every material way, entirely consistent with each other from the June 4 contemporaneous documentation to this day. The record gives us no basis to question the credibility of the agency's witnesses. On the other hand, the record contains the courier's accounts which are, in numerous material ways evident above, inconsistent with each other. The record thus gives us ample basis to question the credibility of the courier.

The issue of credibility might vanish if the accounts of the courier and the agency could be completely reconciled in some reasonable way. The protester has certainly not tried to effect such a reconciliation, choosing to ignore the evidence which contradicts the courier's latest version of events, and our attempts at a complete reconciliation have failed. The record provides us with but one important point of agreement between the courier and the contract facilitators--Mr. Basorun called the number on his airbill from the Civic Center area to ask for directions to 71 Stevenson Street.

Both contract facilitators state that Mr. Basorun had this conversation with Mr. Thorslev, and that the conversation concluded at 12:49 p.m. Their testimony is consistent with Mr. Basorun's location when he says he made this call; with the directions which Mr. Thorslev gave and which Mr. Basorun noted on the airbill and took; and with every piece of contemporaneous documentation in the record. To share the protester's blind assumption that this telephone call was made at some earlier time and, further, was with Ms. McBroom, we would have to ignore all of the contemporaneous evidence, ignore the contract facilitators' evident propensity for documentation and their obvious desire to facilitate this delivery, and disbelieve their hearing testimony. We cannot do so. The weight of the evidence shows that Mr. Basorun spoke with Mr. Thorslev to obtain directions from 9th and Stevenson and that this conversation concluded at 12:49 p.m. Mr. Basorun had therefore given himself 11 minutes to perform all of the tasks he says he performed on his way to Room 515.

Mr. Basorun drove down Market Street to 2nd, turned right on 2nd, and turned left on Stevenson. He took this heavily traveled route, approximately 1 1/4 miles long, in weekday, lunchtime traffic. Mr. Basorun cannot tell us how long it took to make this drive on June 4. He states that the Market Street drive could take 3 minutes or 15 minutes. T. 219 at 21-25; 220 at 1-2. A Med-National consultant states that the drive from the second delivery site, very near the site of the phone call, took him

9 minutes. Construing events in the most favorable light to the protester, we will assume--given that Mr. Basorun's call to Mr. Thorslev concluded at 12:49 p.m. and given Mr. Basorun's contention that he arrived in Room 515 before 1 p.m.--that the drive on June 4 took less than 11 minutes.

Whenever it was that Mr. Basorun turned onto the proper segment of Stevenson, he pulled his vehicle into the loading dock across the street. Instead of asking the guard for permission to leave his car to run across the street and deliver the proposal, he says he asked the guard for permission to leave his car to make a telephone call. He called the number on his airbill. Contrary to all other evidence in the record, he says he spoke to someone--a man or a woman, he does not recall--about parking.⁸ For the same reasons as above, we do not find this account credible. The only people who would have answered that number categorically deny Mr. Basorun's account which, in itself, makes little sense. He had just driven past 71 Stevenson where there is plainly no parking and, further, his August 5 claim that he was given directions to the building implies that he gave the person taking the call his location, and that someone actually gave him directions from right across the street.

At any rate, whether or not there was a telephone call, 1 p.m. was approaching and Med-National's proposal was still not in Room 515. Mr. Basorun states that at the conclusion of this call he returned to his vehicle, pulled back onto Stevenson, drove half a block to First Street, turned right, drove five blocks to Howard Street, and parked. He cannot tell us how long this took, only that it would have been "minutes." T. 163 at 17-25; 164 at 1. He put the package on his shoulder and retraced his route. Again, on August 5 he said this took 2 to 2 1/2 minutes or less; at the hearing he said it took 5 minutes at the most; T. 164 at 2-4; and at the hearing "reenactment" the walk took nearly 5 minutes. V. 16:18:07-23:20.

If by some chance it was still prior to 1 p.m. when Mr. Basorun arrived in the lobby, we know that the contract facilitators arrived there at 12:55 p.m., had two brief conversations, and exited the building to stand on the Stevenson Street side looking for, among other things, someone carrying a package. Even if we assume that these conversations lasted as long as 2 minutes, they were on the sidewalk at around 12:57 p.m. and up until 1:05 p.m. They did not see him. Our review of the entire record shows that they would have seen him if he had been there at that time.

Med-National's theory is that Mr. Basorun simply passed the contract facilitators in the elevator as he was going up to Room 515 and they were coming down to look

⁸Mr. Thorslev specifically denies having had any discussion of parking with Mr. Basorun. T. 11 at 2-7. Ms. McBroom, again, specifically denies having had any discussion at all with him. T. 71 at 23-25; 72 at 1.

for him.⁹ For this theory to be consistent with the undisputed record, Mr. Basorun must have been in an elevator, going up, at about 12:55 p.m. Even setting aside what we consider to be the impossibility of his having performed all of the above tasks above in under 6 minutes, Med-National's theory is untenable.

By Ms. Chavarin-Morales' account, she had a brief conversation in the lobby with the contract facilitators at around 12:55 p.m., then went straight up the elevator and to her cubicle within 2 or 3 minutes of that conversation. She was at her desk a few minutes, looked at the clock, and it was "around" 1 p.m. She remained at her desk until the contract facilitators' return, sometime after 1:05 p.m. If Mr. Basorun had been in Room 515's reception area between, say, 12:58 p.m. and 1 p.m., she would have seen or heard him. She did not.¹⁰ For Mr. Basorun to have missed both the contract facilitators and Ms. Chavarin-Morales, he would have to have been in Room 515 between 12:55 p.m. and 12:58 p.m., and departed immediately, prior to 1 p.m. On August 5, Mr. Basorun said that at the time he left Room 515 it was after 1 p.m. Moreover, since he says that when he left Room 515 he went straight down to the guard's desk, we have no explanation for the 12 minute delay between 12:58 p.m. and 1:10 p.m., the time the guard signed for the package, and no explanation for how Mr. Basorun might have yet again missed the contract facilitators in the lobby around 1:05 p.m. Med-National's theory simply does not hold up under scrutiny.

We cannot say definitively that Mr. Basorun was not in Room 515 prior to 1 p.m. on June 4. Given the countervailing evidence to the contrary, however, the preponderance of the evidence does not show that he was in the proper place by the proper time, and Med-National's proposal was therefore properly rejected as late. See IPS Group, supra.

The protest is denied.

Comptroller General
of the United States

⁹Med-National's other theory--that Mr. Basorun walked into the building as the contract facilitators were conversing with Ms. Chavarin-Morales in the lobby and somehow evaded their view--suffers from the same weaknesses as its principal theory and need not be separately discussed.

¹⁰Using the contract facilitators' recollection of the location of their meeting with Ms. Chavarin-Morales, she would have been at her desk even earlier.